IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Kishan Lal & Others Vs. State of Rajathan
(D.B. Criminal Appeal No.1240/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 7-8-2002 in Sessions Case No.18/2002 passed by Shri R.C. Meena, RHJS, Additional Sessions Judge (Fast Track) No.2 Kota.

Date of Judgment: May 21, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Surendra Sharma, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated August 7, 2002 of the learned Additional Sessions Judge (Fast Track) No.2, Kota, whereby the appellants, four in number, were convicted and sentenced as under:-

Appellant Bhanwar Lal:
U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.307/34 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.324/34 IPC:

To suffer rigorous imprisonment for one year.

U/s.341 IPC:

To suffer simple imprisonment for one month.

Appellant Sarma @ Saramraj :

U/s.302/34 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.307/34 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.326 IPC:

To suffer rigorous imprisonment for five years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.324/34 IPC:

To suffer rigorous imprisonment for one year.

U/s.341 IPC:

To suffer simple imprisonment for one month.

Appellant Kishan Lal:

U/s.302/34 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.307 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.326/34 IPC:

To suffer rigorous imprisonment for five years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.324/34 IPC:

To suffer rigorous imprisonment for one year.

U/s.341 IPC:

To suffer simple imprisonment for one month.

Appellant Pappu @ Pappu Lal:

U/s.302/34 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.307/34 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.326 IPC:

To suffer rigorous imprisonment for five years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

U/s.324 IPC:

To suffer rigorous imprisonment for one year.

U/s.341 IPC:

To suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on October 25, 2001 around 10 PM Raghuveer Singh SHO Police Station Ayana received information over telephone that two persons were lying near the bank of Parvati River in an injured condition. On reaching the spot SHO found that out of two injured persons one Mahaveer had already died and another Phool Chand sustained injuries. In the Parcha Bayan Phool Chand stated that on the said day around 6 PM while he along with his son Mahaveer and Ramhet Meena were returning back from their field Kishan Lal and his sons viz. Sarma, Bhanwar Lal and Pappu belaboured them near the bank of river. All the

assailants who were armed with Kutia, Dhariya and Gandasi made assault on them. Bhanwar Lal inflicted Gandasi blow on the neck of Mahaveer as a result of which he fell down, Sarma, Pappu and Kishan Lal caused injuries on his (Phool Chand) waist, shoulder and head with Gandasi, Kutiya and Dharia. On that parcha bayan a case was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded and after completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Kota. Charges under sections 302, 302/34, 307, 307/34, 326, 326/34, 325, 325/34, 324, 324/34, 323, 323/34 and 341 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 21 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard learned counsel for the appellants and learned Public Prosecutor and with their assistance scanned the material on record.

4. Death of Mahaveer was undeniably homicidal in nature. Vide Post Mortem Report (Ex.P-35) following ante mortem injury was found on the dead body:-

> Incised wound 5” x 2” with cutting of whole vertebral column at 1st cervical vertebra -Pr on back of neck.

In the opinion of Dr. G.L.Meena (Pw.16) the cause of death was hemorrhagic shock due to injury to brain.

5. A look at the injury report (Ex.P-36) goes to show that Phool Chand had sustained as many as six injuries thus:-

1. Incised wound 4cm x 2cm x 1cm on left hand above Iliac crest.
2. Incised wound 4 x 2 x 1cm on Rt.hand above Iliac crest.
3. Lacerated wound 3 x ½ x ½ cm on scalp left frontal bone.
4. Lacerated wound 1 x ½ x ½ on long aspect forearm left side.
5. Abrasion 3cm long on left shoulder.
6. Abrasion 2cm long on back left shoulder.

6. In his deposition Phool Chand (Pw.7), the star witness of prosecution stated that on the day of incident while he along with Mahaveer and Ramhet were passing near the bank of river Bhanwar Lal gave Gandasi-blow on the neck of Mahaveer, another injury was caused by Sarma on the waist of Mahaveer with Gandasi. All the four accused inflicted blows on the person of Mahaveer.

"भंवरलाल ने गंडासी की गर्दन पर पीछे सर के नीचले हिस्से पर मारी जिससे वह नीचे गिर गया और चारों उसके साथ एक साथ मारपीट करने लग गए। वक्त घटना पप्पू के पास कूटिया सरमा के पास गंडासी भंवर लाल के पास गंडासी किशन के पास धारिया था। इन चारों ने मारपीट की। मेरे लडके महावीर के दूसरी चोट गंडासी की सरमा ने कमर पर मारी। उसके दो चोट सिर में मारी। एक चोट उसके हाथ पर मारी उसका कान भी कट गया था। यह सारी चोटें चारों मुलजिमान ने मिलकर मारी ..."

7. Dr.G.L.Meena (Pw.16) who conducted autopsy on the dead body however deposed that deceased Mahaveer sustained only one ante mortem incised wound on the back of neck.

8. Ramhet (Pw.3) did not support the prosecution case and he was declared hostile.

9. Raghuveer Singh SHO (Pw.12) in his cross examination stated thus:-

> "मृतक महावीर को मैंने मोरे पर चैक किया था उसकी चोटें भी देखी थी उसके केवल एक चोट गर्दन पर थी और कोई उसके जाहिरा चोट नहीं थी।"

10. Fact situation emerges from the material on record may be summarized as under:-

(i) As per the evidence of Phool Chand, deceased Mahaveer had sustained more than five sharp edged wounds on the neck, head, hand and ear and those injuries were attributed to all the four appellants.

(ii) However according to post mortem report deceased sustained only one incised wound on the back of his neck.

(iii) Raghuveer Singh IO saw only one injury on the neck of the deceased.

(iv) Ramhet who was named as eye witness in the Parcha Bayan did not support the prosecution case.

11. Having closely scanned the testimony of Phool Chand we find that it is consistent qua appellant Bhanwar Lal alone and possibility of over implication of appellant Kishan Lal, Pappu @ Pappu Lal and Sarma @ Saramraj cannot be ruled out. It is no doubt true that Phool Chand also sustained injuries but he has attributed these injuries to appellants Kishan Lal, Sarma and Pappu whose presence at the time of incident is not established. Having separated truth from the falsehood in the testimony of

Phool Chand we find that guilt against Kishan, Pappu and Sarma is not established beyond reasonable doubt.

12. For these reasons, we dispose of instant appeal in the following terms:-

(i) We allow the appeal of appellants Kishan Lal, Pappu @ Pappu Lal and Sarma @ Saramraj and acquit them of the charges under sections 302/34, 307, 307/34, 326, 326/34, 324, 324/34 and 341 IPC. Appellants Kishan Lal, Pappu @ Pappu Lal and Sarma @ Saramraj, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(ii) We dismiss the appeal of appellant Bhanwar Lal and maintain his conviction and sentence under section 302 IPC. We however acquit him of the charges under sections 307/34, 326/34, 324/34 and 341 IPC.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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